



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS UNITED STATES AIR FORCE
WASHINGTON, DC

MAY 16 2001

PERSONNEL AND
READINESS

MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY
(MANPOWER AND RESERVE AFFAIRS)
ASSISTANT SECRETARY OF THE NAVY
(MANPOWER AND RESERVE AFFAIRS)
ASSISTANT SECRETARY OF THE AIR FORCE
(MANPOWER, RESERVE AFFAIRS, INSTALLATIONS AND
ENVIRONMENT)
ASSISTANT COMMANDANT FOHUMAN RESOURCES,
U.S. COAST GUARD

SUBJECT: Policy for Implementing the DNA Analysis Backlog Elimination
Act of 2000

This directive-type memorandum provides policy for implementing Section 5 of the DNA Analysis Backlog Elimination Act of 2000 (10 U.S.C. § 1565). This policy will be published in a future revision of DoDI 1325.7, "Administration of Military Correctional Facilities and Clemency and Parole Authority."

Pursuant to 10 U.S.C. § 1565, each UCMJ offense on the attached list has been determined to be a "qualifying military offense" (QMO). DoD and the Department of Transportation are required to collect DNA samples from each member of the armed forces under their jurisdiction who has been convicted of a QMO, except any member in the custody of the Federal Bureau of Prisons or under the supervision of a Federal probation office. The samples must be analyzed and the results sent to the FBI for inclusion in its Combined DNA Index System (CODIS).

For the purpose of implementing 10 U.S.C. § 1565, a QMO conviction is defined as the findings of a general or special court-martial that include a QMO after the court-martial convening authority has taken action under Article 60, UCMJ. The requirement to collect DNA samples does not apply to the findings of a summary court-martial or proceeding under Article 15, UCMJ.

The U.S. Army Criminal Investigation Laboratory (USACIL) shall analyze all DNA samples collected in DoD under the authority of 10 U.S.C. § 1565 and submit the results to the FBI. The USACIL shall develop and procure a collection kit, which it will provide to all large DoD correctional facilities and to other locations the Services designate.

Each DoD correctional facility shall identify and collect DNA samples from all of its prisoners who have a QMO conviction, regardless of Service affiliation. Service Secretaries shall identify and collect DNA samples from those members under their jurisdiction who have a QMO conviction but are not confined. Collecting DNA samples from members on appellate

excess leave may pose an administrative burden, but is required by 10 U.S.C. § 1565. To fulfill this requirement, the Services are encouraged to cooperate in the collection of DNA samples from members on appellate excess leave, regardless of the member's particular Service.

Correctional facility or command representatives shall ensure that all DNA samples are collected by qualified medical personnel using the kits provided by USACIL and in accordance with the accompanying instructions. Correctional facility representatives shall ensure that the member's confinement file reflects that a DNA sample has been collected.

Once the sample is packaged in the kit, the kit shall be mailed to the USACIL, and the sender shall notify the USACIL by electronic mail that the sample has been mailed. The notification shall include only the name of the individual from whom the sample was taken, the kit number, and the location from which the sample is being mailed. The USACIL shall confirm receipt of the sample by electronic mail and notify the sender if problems are encountered that require the DNA sample to be redrawn.

For QMO convictions resulting from convening authority action on or after June 19, 2001, the cognizant Staff Judge Advocate shall ensure that the top of the first page of the initial promulgating order is annotated in bold with "DNA processing required. 10 U.S.C. § 1565." Staff Judge Advocates shall ensure that a copy of each annotated promulgating order is provided to the USACIL and, as applicable, the correctional facility or unit to which the convicted member is assigned. Periodically, USACIL shall reconcile promulgating orders received with DNA samples received. Service Secretaries shall designate a point of contact for USACIL to contact concerning any discrepancies not explained by normal processing time.

The U.S. Disciplinary Barracks (USDB) shall designate a point of contact to answer all questions from Federal Bureau of Prisons facilities and Federal probation offices pertaining to whether prisoners and former prisoners still under supervision have a QMO. Service Secretaries shall designate a point of contact available to assist the USDB answer these questions.

The correctional facility or command representative responsible for ensuring that a DNA sample is collected from a member with a QMO conviction shall ensure that the member is given a card informing him or her that if the conviction for each QMO is reversed during appellate review, the member may request that the USACIL expunge the DNA analysis from CODIS. The USACIL shall provide preprinted cards as part of the collection kit.

Upon receipt of an expungement request, the USACIL shall, for each QMO conviction, request the Service's designated point of contact provide a certified copy of a final order establishing that the conviction was overturned. Additionally, the USACIL shall determine whether the requester has a conviction for a qualifying Federal offense (42 U.S.C. § 14135a) or qualifying District of Columbia offense (42 U.S.C. § 14135b) before taking action to expunge the record based on a QMO. Only in those cases where the USACIL has verified that the requester has no other qualifying military, Federal, or District of Columbia conviction will it expunge the DNA analysis from CODIS. When a DNA analysis is expunged, the DNA sample maintained at the USACIL shall be destroyed.

In cases where each QMO conviction has been reversed, the Service Secretaries may establish separate procedures to initiate an expungement process by the USACIL that is independent of any request from the affected member or former member.

Collection of DNA samples in accordance with this memorandum shall start no later than June 19, 2001, provided that distribution of the collection kits has occurred by that date.

//Original Signed//
Charles L. Cragin
Acting

Attachment
As stated

QUALIFYING MILITARY OFFENSES UNDER 10 U.S.C. § 1565

Definition:

Court-Martial Conviction. The findings of a general court-martial (10 U.S.C. § 818) or special court-martial (10 U.S.C. § 819) at the time of action of the court-martial convening authority pursuant to 10 U.S.C. § 860.

Offense	UCMJ Article	Title 10 Section	NIBRS Code	DIBRS Code
Murder	118	918	09A	118A-D
Voluntary Manslaughter	119	919	09A	119-A
Rape	120	920	11A	120A
Carnal Knowledge	120	920	36B	120B1/2
Forcible Sodomy	125	925	11B	125A
Sodomy With a Child	125	925	11B	125B1/2
Aggravated Assault (with a dangerous weapon or other means or force likely to produce death or grievous bodily harm)	128	928	13A	128-J1-J2
Aggravated Assault (in which grievous bodily harm was intentionally inflicted)	128	928	13A	128-H1-H2
Indecent Assault	134	934	11D	134-C1
Indecent Acts With Another	134	934	11D	134-R5
Indecent Acts With a Child	134	934	11D	134-R1
Indecent Language to a Child	134	934	90Z	134-R3

Pandering (By compelling or by arranging or by receiving consideration for arranging)	134	934	40B	134-B5*
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*Only in cases when accused arranged for, or received valuable consideration for arranging for, a certain person to engage in sexual intercourse or sodomy with another person.

Prostitution Involving a Minor	134	934	40A	134-B6
Kidnapping	134	934	100	134-S1
Robbery	122	922	120	122A-B
Burglary	129	929	220	129—
Housebreaking	130	930	220	130—
Maiming	124	924	13A	124—
Arson	126	926	200	126A-B2
Assault With Intent to Commit Murder	134	934	13A	134-C2
Assault With Intent to Commit Rape	134	934	11A	134-C4
Assault With Intent to Commit Voluntary Manslaughter	134	934	13A	134-C3
Assault With Intent to Commit Robbery	134	934	13A	134-C5
Assault With Intent to Commit Sodomy	134	934	11B	134-C6
Assault With Intent to Commit Arson	134	934	13A	134-C8

Assault With Intent to Commit Burglary	134	934	13A	134-C8
Assault With Intent to Commit Housebreaking	134	934	13A	134-C7
Solicitation of Another To Commit a Qualifying Offense	134	934	90Z	134-U7**

** For this offense, the offense code will be the code of the offense solicited and “S=Solicit” will be reflected in Data Element 18 of the offense information field.

The following offenses do not have a related DIBRS code:

Attempt to Commit a Qualifying Offense – Article 80, UCMJ (10 U.S.C. § 880)

Conspiracy to Commit a Qualifying Offense – Article 81, UCMJ (10 U.S.C. § 881)

Conviction for any conduct similar to the above offenses, any conduct which involves any form of sexual abuse, and any conduct of a sexual nature that involves a minor, when charged as an assimilative offense under Article 134, UCMJ.

Conviction for any conduct similar to the above offenses, any conduct which involves any form of sexual abuse, and any conduct of a sexual nature that involves a minor, when charged as conduct unbecoming an officer and a gentleman in violation of Article 133, UCMJ, or conduct that is prejudicial to good order and discipline or is service discrediting, under Article 134, UCMJ.

Conviction for conduct described in Chapter 117, §§ 2421, 2422, 2423, 2425 of title 18, United States Code, when charged as Article 133 or 134, UCMJ, offenses.

Conviction for conduct described in Chapter 110 §§ 2251, 2251A, 2252 of title 18, United States Code, when charged as Article 133 or 134, UCMJ, offenses.

Peonage or Slavery: Conviction for conduct described in Chapter 77 of title 18, United States Code, when charged as Article 133 or 134, UCMJ, offenses.